

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re M.P. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.P.,

Defendant and Appellant.

B304410

(Los Angeles County
Super. Ct. No. 19CCJP06096A-B)

APPEAL from an order of the Superior Court of Los Angeles County, Michael E. Whitaker. Judge. Affirmed.

Christina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father appeals the juvenile court's dispositional order permitting only monitored visitation between him and his younger child, J.P. He contends the juvenile court abused its discretion in ordering monitored visitation. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 18, 2019, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code¹ section 300 alleging (1) Father physically abused his two children, 14-year-old M.P. and nine-year-old J.P.; (2) Mother and Father, now separated, engaged in domestic violence in the presence of the children; and (3) Mother failed to protect the minors from Father's physical abuse.

The physical abuse allegations later found true by the juvenile court stated that on September 13, 2019, Father repeatedly struck M.P. in the chest with his fists, inflicting pain to the child. He also pushed the child, causing M.P. to fall back onto a door. He grabbed the child's wrist and shook the child, repeatedly punching the child in the chin causing the child's teeth to clench. On specific prior occasions, Father threw a cellphone at the child, inflicting marks and bruises to the child's chest; struck the child's face with open hands, grabbed the child's shirt; pulled the child's hair; and threw the child on the floor.

As to J.P., the juvenile court later found true the allegations Father recently struck J.P. with his hands and with a belt.

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise stated.

On December 12, 2019, the juvenile court held a jurisdictional and dispositional hearing on the operative First Amended Petition filed October 21, 2019. The First Amended Petition added a count alleging Father and his domestic partner engaged in physical altercations in the presence of the children. The court sustained the counts alleging physical abuse as to both children and dismissed the counts alleging domestic violence in the presence of the children between the parents and between Father and his domestic partner. The court also dismissed the count alleging Mother failed to protect the children.

At the dispositional hearing on the same day, the court ordered the minor children released to Mother under the supervision of DCFS. It ordered family maintenance services for Mother and enhancement services for Father. Mother and Father were each ordered to participate in individual counseling with a licensed therapist. The court found individual counseling would be in the best interest of the minor children. As for Father, the court ordered anger management and parenting classes. The court also ordered monitored visitation for Father with both minor children.

DISCUSSION

A dispositional order must provide for visitation in order to maintain ties between parents and any siblings and the child and to provide information relevant to deciding if and when to return a child to the custody of his or her parent. (§ 362.1, subd. (a); *In re T.M.* (2016) 4 Cal.App.5th 1214, 1218.) Section 362.1, subdivision (a)(1)(A) provides, “Visitation shall be as frequent as possible, consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A).) Supervised visitation is warranted where

unsupervised visits would jeopardize the minor's safety. (See *id.*, subd. (a)(1)(B).)

One of the juvenile court's responsibilities is to define the rights of the parties to visitation by balancing the rights of the parent with the best interests of the child. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) The court has broad discretion in fashioning visitation orders, and its determination will not be disturbed on review absent an abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) The reviewing court must consider all the evidence, draw reasonable inferences, and resolve evidentiary conflicts in the light most favorable to the trial court's ruling. The test is whether any rational trier of fact could conclude that the visitation order advanced the child's best interest. The court must uphold the ruling if it is correct on any basis, regardless of the ground on which the trial court relied. (*Ibid.*)

Here, the unchallenged findings of the juvenile court establish that Father struck J.P. with his hands and with a belt. Father maintained with DCFS and with the court that he only struck J.P. as a form of discipline. On appeal, Father continues to argue he presented no safety risk to his child. This ignores and is belied by the juvenile court's finding that the "discipline" Father imposed constituted physical abuse. The juvenile court specifically found Father not credible in his denials of physical abuse and found that he minimized "his physical discipline, which the court finds amounts to physical abuse. The court is giving more weight and credibility to the statements of both [children] regarding physical abuse by the father."

Father also argues J.P. wants unmonitored visitation with him and that J.P.'s wishes should be respected. J.P.'s desire for unmonitored visitation is relevant but not dispositive. (*In re S.H.* (2003) 111 Cal.App.4th 310, 317.) In this regard, it is a significant countervailing fact that J.P. told the social worker he felt completely safe with Mother, but "fifty-fifty" safe in the company of Father. Moreover, J.P. was angry with and blamed M.P. for the monitored visitation. J.P. felt M.P. should have "lied" about the physical violence occurring with their Father. It goes without saying that deferring to the wishes of a nine-year-old willing to countenance lies to cover up Father's physical violence toward his children would have been imprudent.

Relying on *In re E.E.* (2020) 49 Cal.App.5th 195, 217, Father argues J.P. was subjected to less physical violence than M.P. and was "differently situated" from M.P., justifying unmonitored visitation. We disagree. Both children were victims of physical violence. Whether one was more often on the receiving end is immaterial. This is not a case where the juvenile court used past abuse of a sibling to justify removal of a non-targeted sibling. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 147 [past abuse of a sibling does not, on its own, justify removing a child from their parents]; *In re E.E.*, at p. 216 [same].) Father's reliance on this line of cases is misplaced.

Moreover, M.P. reported Father would take away his cell phone during altercations so M.P. could not call for help. J.P. had also reported to the social worker that Father had threatened to hit J.P. with his knuckles, the way he hit M.P. It is a reasonable inference Father was not above subjecting J.P. to the same physical violence he inflicted upon M.P. The monitored visitation order was designed to ensure the minors' safety until

Father demonstrated he could parent both children without resorting to physical violence. That Father has not erupted during monitored visitation with J.P. proves nothing at this point. We commend Father for engaging in services designed to reunite him with his children. Nevertheless, Father must complete his case plan and convince the juvenile court that he is no longer a physical danger to his children before monitored visitation can be safely discontinued.

DISPOSITION

The juvenile court's visitation order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.